

No. 11714

United States
Circuit Court of Appeals
For the Ninth Circuit.

WILLIAM BERNARD BLEDSOE,

Appellant.

VS.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to cur.]

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NAMES AND ADDRESSES OF ATTORNEYS

BILLY BERNARD BLEDSOE,

Alcatraz, California,

In Propria Persona.

FRANK J. HENNESSY,

United States Attorney,

Northern District of California.

Post Office Building,

San Francisco, California.

Attorney for Respondent and Appellee.

On appeal from the United States District Court
for the Northern District of California, South-
ern Division.

Decision of the Honorable Michael J. Roche,
District Judge.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 27412 R

BILLY BERNARD BLEDSOE,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,

Respondent.

PETITION FOR
WRIT OF HABEAS CORPUS

To the Honorable Judge of the United States
District Court for the Northern District of
California, Southern Division:

Petitioner requests this court to take judicial
notice of its own records on file in this court in
action No. 24843-S, all exhibits referred to herein-
after will be found in the above mentioned cause
in this court—No. 24843-S.

Comes now the petitioner, Billy Bernard Bledsoe,
by his verified petition, and alleges:

I.

That your said petitioner is now unlawfully re-
strained of his liberty by the respondent James A.
Johnston, Warden of the United States Peniten-
tiary, Alcatraz Island, California, which said peni-
tentiary is located in the City and County of San
Francisco, State of California; that your said

petitioner and the said James A. Johnston, and the said United States penitentiary are each and all of them situated and located within and subject to the jurisdiction of the above entitled court; that this said court does have jurisdiction of this habeas corpus proceeding.

II.

That the cause or pretense of the petitioner imprisonment and restraint by the respondent in his capacity as warden is founded upon and under color of authority, of the United States, by virtue of two judgments, commitments and sentences, each of which issued from, out of, and under the seal of the District Court of the United States, for the Eastern District of Texas, Paris Division in the State of Texas, on or about the 11th day of December, 1939, in action No. 1335 and action No. 1166 of said court above mentioned; that the said judgments, commitments and sentences above referred to were in each instance based upon pleas of guilty by the petitioner in the two separate actions, No. 1335, and No. 1166, as above referred to; that in each instance said pleas of guilty were to alleged violations of the United States Code, Title 18, Section 315.

III.

That thereafter and on the 25th day of September, 1944, your petitioner filed a petition for writ of habeas corpus in the above entitled Court which said action was number 23722-S on the records of

said court; that annexed to said petition in action No. 23722-S on the records of this court, were petitioners exhibits (3) A, B, & C, which are certified copies of the documents herein after described. That said exhibits A.D. and C in action No. 23722-S were annexed to and incorporated and made a part of action No. 24843-S on file in this court and referred to by petitioner in this present petition; A. "Exhibit A" consists of copies of the indictment judgment, commitments, sentences and return in criminal case No. 1335 made and entered on the 11th day of December, 1939, in the court above referred to.

B. "Exhibit B" consists of the Docket entries in cause No. 1166 showing that the sentences imposed in cases No. 1166 and No. 1335 are to run concurrently. C. "Exhibit C" consists of three documents (1) a certified copy of the indictment upon which action No. 1166 was based, which said indictment was returned on the 4th day of December, 1939; (2) a certified copy of judgment and sentence in action No. 1166, made and entered on the 11th day of December, 1939; (3) Certified copy of judgments and commitment and marshal's return in action No. 1166 made and entered on the 11th day of December, 1939.

The Marshal's return in both cases as contained in said exhibits, disclose that the petitioner was delivered by the United States Marshals to the Lamar County jail on the 11th day of December, 1939, and in each instance was thereafter and on

December 15, 1939, delivered to the United States Penitentiary, at Leavenworth, Kansas, together with certified copies of the judgment and commitment in each of the above numbered cases, No. 1335 and No. 1166.

IV.

That upon the hearing of the said petition No. 23722-S by the above entitled court the Honorable A. F. St. Sure, the United States District Court, Judge presiding, the said judge did then and there issue in said action No. 23722-S a certain memorandum and order, a copy of which is entitled exhibit "D" in the records of this court in action No. 24843-S.

That in conformance with the said aforementioned order, exhibit D, this petitioner was returned to Paris, Texas, where he appeared before the Honorable Robert L. Williams, United States Circuit Court judge sitting by assignment in the United States District Court for the Eastern District of Texas, Paris Division, on the 29th day of January, 1945, at which time a motion was filed by Steve M. King, United States Attorney for the Eastern District of Texas in the action of United States of America v. Billy Bernard Bledsoe, et al. Criminal No. 1166, Texarkana, Division and Criminal No. 1335, Jefferson Division. That a certified copy of the said motion is marked Exhibit "E" in action No. 24843-S of this court.

That in line with said motion, on the said 29th

day of January, 1945, in the said District Court of the United States, Eastern District of Texas, Paris Division, proceeding was had, a transcript of which proceeding, is marked exhibit "F" in said prior petition in this court, No. 24843-S.

That after the hearing as evidence by the above mentioned exhibit F, and on or about the 6th day of February, 1945, the court entered a certain order in the action of United States of America v. Billy Bernard Bledsoe, Criminal No. 1166, Texarkana Division, which said order is evidenced by exhibit G and made a further order in the action of United States of America v. Billy Bernard Bledsoe, et al., Criminal No. 1335, Jefferson Division, as evidenced by exhibit "H," both of which said exhibits "G" and "H" are to be found in the records of this court in action No. 24843-S.

That the said exhibits above referred to and each of them were made during the regular course of business by the District Court of the United States, Eastern District of Texas, Paris Division, and by the District Court in the Southern Division, of the United States for the Northern District of California.

Grounds for the Writ

That the petitioner herein has been since the 15th day of September, 1944, and now and presently is being illegally and unlawfully restrained and deprived of his liberty in violation of the Statutory Laws, the Constitution provision of the Constitu-

on of the United States, and the amendments hereto, for the following reasons:

1. That the said petitioner has fully and completely served and discharged the sentences and judgments imposed upon him by the District Court of the United States, Eastern District, Paris Division, in actions No. 1335 and No. 1166, which said judgments are exhibits "A" and "C" of action No. 24843-S of this Court.

2. That at the time of the filing of the petition for writ of habeas corpus on the 25th day of September, 1944, in action No. 23722-S before the above entitled court, the said petitioner had fully and completely served and discharged the sentences and judgments then in force and effect, which said sentences and judgments were neither void nor incapable of construction within the limits of said judgments as evidence by exhibits "A" and "C" of this court records in action No. 24843-S.

3. That the judgments issued December 11th, 1939, exhibits "A" and "C" are valid judgments for a term of five (5) years.

4. That the judgments issued February 6th, 1945, marked exhibits "G" and "H" are null and void and of no force and effect in that judgments "G" and "H" in effect increased petitioners punishment by a term of five (5) years, and after the original judgments had been fully served; and that the Court had no jurisdiction to increase its own written and signed judgments.

5. That the petitioner herein is now being illegally and unlawfully imprisoned and restrained of his liberty in the United States Penitentiary at Alcatraz by the respondent herein under color of authority of said judgments "G" and "H" and by a misapplication, misunderstanding and wrongful interpretation by the respondent of the sentences, judgments and commitments made and entered by the District Court of the United States, Eastern District, Paris Division, in actions No. 1335 and No. 1166, on the 11th day of December, 1939; that by reason of said misapplication, misunderstanding and wrongful interpretation by the respondent of said sentences, and judgments in the actions aforementioned the said respondent threatens to keep the petitioner imprisoned for another term of five years, and will do so unless this court issues the Writ of Habeas Corpus requested herein. That respondent has erroneously and unlawfully concluded that the sentences, judgments and commitments in the two actions above referred to ("A" and "C") were to run consecutively and not concurrently, where as in truth and fact the said sentences, under the existing law, have run concurrently, and both of said sentences have been served in full, and this petitioner should have been discharged on the 15th day of September, 1944.

Wherefore the petitioner herein respectfully prays:

That this Honorable Court issue an order to show cause herein, ordering and commanding the

respondent to appear before this court and show cause, if any he may have, why a writ of Habeas Corpus should not be issued herein, and that thereafter upon the hearing of the order to show cause, the said court should proceed to determine the fact and cause of petitioners restraint of liberty by hearing such testimony of the petitioner as appertains to said matter, and arguments, and thereupon enter an order sustained said petition granting the Writ of Habeas Corpus, and discharge the petitioner from further custody of respondent, and from further illegal restraint of his liberty, as law and justice require.

And petitioner will ever pray.

Respectfully submitted,

BILLY BERNARD BLEDSOE,
Petitioner pro se.

State of California,
City and County of San Francisco—ss.

Billy Bernard Bledsoe, being first duly sworn,
deposes and says:

That he is the petitioner in the above entitled matter; that he knows the contents of the foregoing petition for Writ of Habeas Corpus; that the same is true of his own knowledge except as to matters stated therein on information and beliefs, and as to those matters he believes it to be true.

BILLY BERNARD BLEDSOE,
Petitioner pro se.

Subscribed and sworn to before me this 10th day
of July, 1947.

[Seal]

E. J. MILLER,

Associate Warden, United
States Penitentiary,
Alcatraz, California.

Records at U. S. Penitentiary, Alcatraz, California, indicate that Billy Bernard Bledsoe is a citizen of the United States.

[Endorsed]: Filed July 12, 1947.

District Court of the United States
Northern District of California

No. 27412 R

BILLY BERNARD BLEDSOE,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden,

Respondent.

ORDER TO SHOW CAUSE

Good cause appearing therefor and upon reading
the verified petition on file herein;

It Is Hereby Ordered that James A. Johnston,
Warden of the United States Penitentiary, at
Alcatraz Island, State of California, appear before
this Court on the 21st day of July, 1947, at the
hour of 10 o'clock a.m. of said day, to show
cause, if any he has, why a writ of habeas corpus
should not be issued herein, as prayed for, and that
a copy of this order be served upon the said
Warden of the United States Penitentiary, at
Alcatraz Island, State of California, by mail and
that a copy of the petition and this order be served
upon the United States Attorney for this District,
his representative herein.

Dated: July 14th, 1947.

MICHAEL J. ROCHE,

United States District Judge.

[Endorsed]: Filed July 14, 1947.

[Title of District Court and Cause.]

MOTION TO DISMISS
PETITION FOR WRIT OF HABEAS CORPUS

Comes now James A. Johnston, Warden, United States Penitentiary, respondent above named, and moves this Honorable Court to dismiss the petition for writ of habeas corpus in the above-entitled case on the grounds that it appears from the undisputed records in the cause that the facts alleged in the petition and all supporting documents are insufficient as a matter of law to support or justify the issuance of a writ of habeas corpus or any order or process discharging the petitioner.

Dated: July 21, 1947.

FRANK J. HENNESSY,
United States Attorney.

JOSEPH KARESH,
Asst. United States Attorney,
Attorneys for Respondent.

[Endorsed]: Filed July 21, 1947.

Title of District Court and Cause.]

ORDER DENYING PETITION FOR WRIT OF
HABEAS CORPUS AND DISCHARGING
ORDER TO SHOW CAUSE

The petitioner herein again by habeas corpus seeks his release from the custody of the respondent, the Warden of the United States Penitentiary, Alcatraz, California, a prior application having heretofore been denied by this Court in Case No. 4843-S, which denial was affirmed on appeal.

Bledsoe vs. Johnston, 154 (2d) 458, certiorari denied, 328 U. S. 872.

The grounds alleged in the instant petition are the same as those heretofore alleged in petitioner's prior application, and although res adjudicata does not apply in habeas corpus proceedings, a prior refusal to discharge on a like application may be considered and given controlling weight.

Swihart vs. Johnston (CCA-9), 150 F. (2d) 721; Certiorari denied, 327, U. S. 789.

Ordered: The petition for writ of habeas corpus is hereby denied and the order to show cause heretofore issued is hereby discharged.

Dated: July 26th, 1947.

MICHAEL J. ROCHE,

United States District Judge.

[Endorsed]: Filed July 26, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL
TO CIRCUIT COURT OF APPEALS

Notice is hereby given that Billy Bernard Bledsoe, petitioner above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that certain order denying and dismissing petitioner's petition for Writ of Habeas Corpus, which said order was signed by Judge Michael J. Roche and entered in this action on July 26th, 1947.

Dated: July 31st, 1947.

BILLY BERNARD BLEDSOE,
Pro se.

[Endorsed]: Filed Aug. 1, 1947.

[Title of District Court and Cause.]

STATEMENT OF POINT
TO BE RELIED UPON APPEAL

The points upon which appellant intends to rely on this appeal is as follows:

That the appellant's sentence was increased by a term of five (5) years over five years after imposition of sentence and, that the Court erred in denying petitioner's petition for Writ of Habeas Corpus.

BILLY BERNARD BLEDSOE.

[Endorsed]: Filed Aug. 1, 1947.

Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Petitioner appellant herein hereby presents his designation of the portions of the records, to be contained in the record on appeal:

1. The petition for Writ of Habeas Corpus
2. Motion to Dismiss Petition
3. Order Denying petition for Writ of Habeas Corpus and discharging order to show cause.
4. Order to show cause
5. Notice of Appeal
6. Statement of points to be relied upon appeal
7. This Designation of record on Appeal and Notice of Petitioners appellant request the Honorable Court of the Ninth Circuit Court of Appeals to take judicial notice of its own records in Bledsoe v. Johnston, Case No. 11,163, for exhibits referred to in this appeal, said records are printed and on file in this court and are marked in alphabetical form.

Dated: July 31, 1947.

BILLY BERNARD BLEDSOE,
Pro. se.

[Endorsed]: Filed Aug. 1, 1947.

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO
TRANSCRIPT OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing 15 pages, numbered from 1 to 15, inclusive, contain a full, true and correct transcript of the records and proceedings in the case of Billy Bernard Bledsoe, Petitioner, vs. James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, Respondent, No. 27412-R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$4.70, and that the said amount has been paid to me by the Petitioner herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 18th day of August, A.D. 1947.

C. W. CALBREATH,
Clerk,

By M. E. VAN BUREN,
Deputy Clerk.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11714

BILLY BERNARD BLEDSOE,

Appellant,

vs.

JAMES A. JOHNSTON,

Appellee.

MOTION

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEALS AND DESIGNATION
OF RECORD TO BE PRINTED

Comes now the appellant, Billy Bernard Bledsoe,
his own proper person, and having heretofore
filed his Statement of Points upon which he will rely
for a reversal of the order of the court below denying
his petition for Writ of Habeas Corpus, which
Statement of Points are adopted herein upon this
appeal, now moves that this Honorable Court con-
sider appellant's designation of records contained
in his practice for the transcript that was heretofore
filed in the court below to be printed herein upon
appeal, in that:

I.

That the appellant's sentence was increased by
a term of five (5) years over five years after im-
position of sentence contrary to law and that court
erred in denying appellant's petition for Writ of
Habeas Corpus.

DESIGNATION OF RECORD
TO BE PRINTED FOR APPEAL

1. The petition for Writ of Habeas Corpus.
2. Motion to dismiss petition.
3. Order Denying petition for Writ of Habeas Corpus.
4. Order to Show Cause.
5. Notice of Appeal.
6. Statement of Points to be relied on upon appeal.
7. Designation of records to be printed upon appeal.
8. This motion.
9. Request for the Ninth Circuit Court of Appeals to take judicial notice of parts of its own printed records in Bledsoe vs. Johnston Case No. 11,163.

Dated: August 22, 1947.

/s/ BILLY BERNARD BLEDSOE,
Pro Per.

[Endorsed]: Filed Aug. 26, 1947.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11714

ELLY BERNARD BLEDSOE,

Appellant,

vs.

JAMES A. JOHNSTON, Warden, United States
Penitentiary, Alcatraz, California,

Appellee.

ORDER THAT TRANSCRIPT OF RECORD
ON PRIOR APPEAL MAY BE REFERRED
TO AS PART OF TRANSCRIPT ON THIS
APPEAL

Upon consideration of the application of Mr.
Elly Bernard Bledsoe, in propria persona for
appellant, and good cause therefor appearing, It
Ordered that the parties in this cause may refer
and use as a part of the transcript of record in
this cause the transcript in the previous appeal of
appellant, No. 11163, provided that such parts of
the previous record in No. 11163 as will be referred
were before the District Court as a part of the
record in the instant case.

/s/ FRANCIS A. GARRECHT,
Senior United States
Circuit Judge.

Dated: San Francisco, Calif., September 3, 1947.

[Endorsed]: Filed Sept. 3, 1947.

